

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

South Metro Human Services

Employer

and

AFSCME Council 5

Petitioner

Case 18-RC-17754

DATE OF MAILING May 11, 2011

AFFIDAVIT OF SERVICE OF

**REPORT ON CHALLENGED BALLOTS AND OBJECTIONS TO CONDUCT AFFECTING
THE RESULTS OF THE ELECTION, ORDER DIRECTING HEARING AND NOTICE OF
HEARING dated May 11, 2011, with Form NLRB-4669, Petition dated March 17, 2011 and
Notice of Expedited Delivery of Transcript attached.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the following persons, addressed to them at the following addresses:

Mr. Tom Paul
South Metro Human Services
400 Sibley Street, Suite 500
St. Paul, MN 55101

Mr. Jeff Sabin
AFSCME Council 5
300 Hardman Avenue South
South St. Paul, MN 55075

Mark S. Mathison, Attorney
Gray Plant Mooty
500 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Cristina Parra Herrera, Attorney
Gregg M. Corwin & Associate Law Office, P.C.
1660 South Highway 100
508 East Parkdale Plaza Bldg.
St. Louis Park, MN 55416-1534

**Subscribed and sworn to before me this 11th
day of May, 2011.**

**DESIGNATED AGENT
/s/ Carol M. Collins**

NATIONAL LABOR RELATIONS BOARD

RECEIVED
2011 MAY 17 AM 10:31
NLRB
ORDER SECTION

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

SOUTH METRO HUMAN SERVICES

Employer

and

AFSCME COUNCIL 5

Petitioner

Case 18-RC-17754

**REPORT ON CHALLENGED BALLOTS AND OBJECTIONS
TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION,
ORDER DIRECTING HEARING AND NOTICE OF HEARING**

Pursuant to a petition filed on March 17, 2011¹, and the provisions of a Stipulated Election Agreement executed by the parties and approved by the Regional Director on March 31, an election by secret ballot was conducted among certain employees of the Employer on April 28². The results of the election are set forth in the Corrected Tally of Ballots that issued on April 29.³ The challenged ballots are sufficient to affect the results of the election.

¹ All dates hereafter are in 2011.

² The stipulated unit is as follows:

All full-time and regular part-time Professional Employees employed by South Metro Human Services; excluding all Service and Maintenance employees, M.D.'s, psychiatrists, licensed psychologists, technical employees, business office clericals, skilled maintenance employees and excluding all managers, supervisors, confidential employees and guards as defined by the Act.

³

Approximate number of eligible voter	171
Void ballots	0
Votes cast for Petitioner	70
Votes cast against Petitioner	71
Number of valid votes counted	141
Number of challenged ballots	9
Number of valid votes counted plus challenged ballots	153

On May 5, the Employer and the Petitioner each filed timely objections to conduct affecting the results of the election, copies of which were duly served on the other party.

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, I investigated the issues raised by the challenged ballots and objections and hereby report and order as follows:

THE CHALLENGED BALLOTS

The Board Agent challenged the ballots of Robin Nadeau, Jennifer Olson, Lindsay Paetznick, and Susan Stamschror because their names did not appear on the eligibility list. The Employer contends that they are on-call employees, not regular part-time employees. The Employer challenged the ballot of Abiodun Adeboye because she is an on-call employee, not a regular part-time employee, whose name was on the eligibility list by mistake. Petitioner contends that Adeboye, Nadeau, Olson, Paetznick, and Stamschror work enough hours to qualify as regular part-time employees.

Petitioner challenged the ballot of Mark Fellows because he was not on the original eligibility list. Petitioner contends that because of that omission, it has no knowledge of Fellows' duties, hours of work, or start date, and one of its objections relates to Fellows' absence from the original eligibility list. The Employer contends that Fellows' omission from the original list was a clerical error and he is a regular part-time employee.

Petitioner challenged the ballots of Darcy Anderson, Samantha Hofmaster, and Cindy Van Heise because they are not "professional" employees within the meaning of the Act and the Stipulated Election Agreement. The Employer contends that they have

sufficient education and training and meet the other criteria to qualify as professional employees.

THE OBJECTIONS

Attached are copies of the objections as filed by the Petitioner and the Employer. As of this date, neither Petitioner nor the Employer has responded to the objections filed by each against the other.

CONCLUSION AND ORDER

I conclude that the challenged ballots of Abiodun Adeboye, Darcy Anderson, Mark Fellows, Samantha Hofmaster, Robin Nadeau, Jennifer Olson, Lindsay Paetznick, Sarah Stamschror, and Cindy Van Heise, and the objections filed by the Petitioner and the Employer raise substantial and material issues of fact which can best be resolved upon record testimony received in a formal hearing. Accordingly, pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended,

IT IS HERBY ORDERED that a hearing be held before a hearing officer designated by the Regional Director for Region Eighteen in the above-entitled matter for the purpose of receiving evidence to resolve the issues raised by the challenged ballots and the Petitioner's and Employer's objections as set forth herein.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting the hearing shall prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues. Within fourteen (14) days from the date of issuance of such report, any party may file with the Board in

Washington, DC, an original and seven (7) copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director, and a statement of service shall be made to the Board simultaneously with the filing of the exceptions. The rights and obligations are further delineated in Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, and all actions of the parties shall be in accordance with the rules covering this type of proceeding as contained therein. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Filing exceptions may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. *Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.* The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that commencing at **9:00 a.m. on the 16th of May, 2011**, and continuing on **May 17th, 19th and 23rd** if necessary, in the **NLRB Hearing Room, 330 Second Ave South, Suite 790, Minneapolis, Minnesota**, the

hearing on the challenged ballots and the Petitioner's and Employer's objections as set forth above will be conducted before a hearing officer of the National Labor Relations Board, at which time and place the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

Dated at Minneapolis, Minnesota this 11th day of May, 2011.

/s/ Marlin O. Osthus

Marlin O. Osthus, Regional Director
National Labor Relations Board
Eighteenth Region
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
SOUTH METRO HUMAN SERVICES,)	Case No. 18-RC-17754
)	
Employer)	
)	
and)	
)	
AMERICAN FEDERATION OF STATE,)	
COUNTY AND MUNICIPAL EMPLOYEES)	
COUNCIL 5,)	
)	
Union.)	

UNION'S POST-ELECTION OBJECTIONS

AFSCME Council 5 ("the Union") hereby submits its Objections to conduct affecting the results of the election held in the professional unit at South Metro Human Services on April 28, 2011.

Objection 1: The Employer threatened to terminate employees that were pro-union.

On or about April 14, 2011 a supervisor told employee _____ during a one-on-one meeting that employees in the Adult Foster Care facilities at South Metro Human Services that supported the Union would be terminated. _____ asked the supervisor why the employer would take this action. The supervisor responded that it believed only a few employees would be targeted and that since turnover was high anyway, no one would notice the terminations. The supervisor's statements were a threat of reprisal. The statements were not statements of facts, but instead bare threats that interfered with employees' free choice in the election.

Objection 2: Employer failed to comply with the *Excelsior* rule by submitting an amended *Excelsior* list shortly before the election.

The election agreement states that the Employer shall provide to the Regional Director, within seven days after the Regional Director approves the election agreement, an election eligibility list containing the *full* names and addresses of all eligible voters. The Regional Director approved the agreement on March 31, 2011. The Employer submitted its *Excelsior* list on April 7, 2011, and at the end of the business day on April 26, 2011, submitted an amended *Excelsior* list. The receipt of this amended list less than two full days before the election was to occur affected the results of this election. First, the original list omitted Mark Fellows; he did not appear on the list until April 26. The original list also included two employees that the Employer removed in the amended list, and that are now the subject of ballot challenges: Abiodun (Shay) Adeboye and Sara Stamschror.

Failure to comply with the *Excelsior* rule is grounds for setting aside the election. The purpose of the *Excelsior* rule is to maximize the likelihood that all voters will be exposed to arguments for and against union representation; to permit the employees to make a fully informed and reasoned decision; to eliminate challenges to voters based solely on lack of knowledge of the employees' identity; to settle objections to election in advance of the election; and to further the public interest by promptly resolving questions of representation.

Submission of an inaccurate or incomplete list may provide a basis for invalidating an election. The omission of a name is particularly serious. An employee's name provides "a key piece of information which can be used to identify and communicate with the person by means other than mail." *Women in Crisis Counseling*, 312 NLRB 589 (1993). Because the employees voted against the Union by only one vote, the omission of even a single vote is highly significant. *Woodman's Food Markets*, 332 NLRB 503 (2000).

In this instance, the omission of Mark Fellows's name from the *Excelsior* list resulted in the employee not being exposed to arguments for union representation. The Union, in fact, was not even able to confirm that Mark Fellows was properly in the bargaining unit. Without the key piece of information that the Employer was supposed to provide to the Union, the Union was unable to identify and communicate with Fellows. This serious omission by the Employer is grounds for setting aside the election because it had a significant impact on the election.

Objection 3: The Employer provided two wage improvements in order to influence the election.

The Employer provided two wage improvements calculated to influence the election. The first improvement went into effect on April 15, 2011, though the Employer stated that it had intended to make them effective on March 31, 2011, the day the Regional Director approved the election agreement. The benefit consists of a wage increase of \$1.00 per hour, as well as subsidized parking.

The second benefit was announced on approximately April 26, 2011, two days before the election. The Employer advised employees at the Main Street Housing Facility that they would receive a raise from a grant that the Employer had recently received. He advised employees that they could decide how to divide the \$5,000 amongst themselves. The Employer has never before provided a wage increase of this kind.

The Employer granted these benefits in order to influence the employees' vote in the election, and the grants of benefits were of a type reasonably calculated to have that effect. *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964). Benefits granted during the critical period are presumed to be coercive. *Uarco Inc.*, 216 NLRB 1 (1974); *Singer Co.*, 199 NLRB 1195 (1972).

Objection 4: The Employer provided a new benefit in order to influence the election.

On the evening of April 26, 2011, Tom Paul, the CEO of South Metro Human Services emailed employees to advise them that they would be receiving a match to their 403(b) accounts. The email acknowledges that this is a new process. The total contribution by the Employer is approximately \$50,000. This announcement was made the same day as the last captive audience meeting the Employer held, and the same day that the Employer amended the *Excelsior* list, less than two days before the election. The grant of this new benefit so soon before an election, and at the same time as the Employer was engaging in other objectionable conduct, show that the Employer intended to interfere with the employees' free choice in the election. *STAR, Inc.*, 337 NLRB 962 (2002).

Objection 5: The Employer's observer provided reports to the Employer during the election regarding employees voting.

The Union believes that the Employer's observer, Daina Lowe, was tallying voters and making notes of which employees were voting, and reporting these results to the Employer during her restroom and lunch breaks. Election surveillance, which tends to interfere with employees' section 7 rights to engage in union activity, may also be grounds for setting aside the results of an election. *Sunbelt Mfg., Inc.*, 308 NLRB 780 (1992).

Objection 6: The Employer held mandatory anti-Union meetings, and paid employees their mileage for attending these meetings.

On at least one occasion, the Employer required employees to attend anti-Union meetings. The Employer paid employees mileage to attend these meetings. The Employer has never before paid workers mileage to attend any other meetings that the Employer has scheduled. The Employer's decision to grant a benefit solely in connection with attending an anti-Union

meeting shows that the purpose of the benefit was to influence the employees' vote in the election, and the conduct was of a type reasonably calculated to have that effect.

Objection 7: The Employer paid employees their mileage to vote at the election.

After obligating employees to attend anti-Union meeting and paying employees' mileage to do so, the Employer paid employees mileage to travel to vote during the election. The Employer's decision to grant a benefit solely in connection with the election shows that the purpose of the benefit was to influence the employees' vote in the election, and the conduct was of a type reasonably calculated to have that effect.

Conclusion

Based on the foregoing, the Union respectfully requests that the Regional Director find that by the conduct described above, the Employer engaged in objectionable conduct and order that the election be overturned.

Dated: May 5, 2011

GREGG M. CORWIN & ASSOCIATE
LAW OFFICE, P.C.

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May 5, 2011

Melissa Bentivolio
Field Examiner
National Labor Relations Board
Region 18
Suite 790, Towle Building
330 Second Avenue South
Minneapolis, MN 55401-2221

VIA E-FILE

Re: Case 18-RC-17754
Challenges & Objections:
Amended Position Statement of Employer South Metro Human Services

Dear Ms. Bentivolio:

This is the Amended Position Statement of Employer South Metro Human Services with respect to challenged ballots in the election conducted in the above-referenced case on April 28, 2011. This letter also sets forth the objections of the Employer to the conduct of the election and to conduct affecting the results of the election.

Melissa Bentivolio
National Labor Relations Board
May 5, 2011
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EMPLOYER OBJECTIONS TO CONDUCT OF THE ELECTION

1. Inconsistent Treatment And Disenfranchisement Of On-Call Employees. In the event that any or all of the Board agent's five challenges to on-call voters who did not appear on the voting list are not upheld, objection is hereby made to the conduct of the election on the basis that the rejection of such challenges will result

in unfair disenfranchisement of all remaining on-call employees and denial of their fundamental Section 7 rights. Under these circumstances over 20 on-call employees would be disenfranchised because they had no awareness of a right to vote in the election or of the possibility of their being included in the bargaining unit. This disenfranchisement did not occur due to conduct or fault of the Employer. Rather, it occurred simply because these employees do not think of themselves as "regular part-time employees." They are not such employees within the lexicon used at South Metro. Significantly, neither the employees nor the Employer knew they might be considered eligible to vote in the election, and when the Employer released a list of potentially eligible voters over a week before the election, it received only one or two inquiries from on-call employees questioning their ineligibility.

Furthermore, the Employer expects it will be clear when the record on these challenges is developed that the Union knew at the pre-election conference that these particular on-call employees would likely be voting, because the Union had solicited them to do so. The Union did not mention the subject of on-call employees being left off the Excelsior list when the voting list was being developed at the pre-election conference, however --- which is a deception and a subterfuge that the Union ought to be required to explain. The Employer, for its part, speculates that the reason the Union did not mention at the pre-election conference (or earlier) the subject of on-call employees voting is that the Union knew full well what the understanding regarding on-call employees had been, and certainly knew what the Employer's understanding was. The Union did not want to tip off the Employer on election day because it did not want the Employer to have a fair opportunity to alert any on-call employees, other than the presumably hand-selected YES voters the Union had solicited, about the potential for them to vote and to be included in the unit.

EMPLOYER OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION

2 X.

Discriminatory Solicitation of Ineligible Voters. Members of the "South Metro Organizing Committee," AFSCME Council 5 employees, and/or other South Metro employees who were openly supporting AFSCME representation have discriminatorily solicited employees to vote whom they had reason to believe were ineligible on-call employees but would cast "YES" ballots. On-call employees who were believed to be "No" votes were not similarly solicited or informed of how to cast a ballot despite not having one's name on the voting list. These solicited voters included, specifically:

3². Discriminatory Solicitation of Ineligible Voters. Members of the "South Metro Organizing Committee," AFSCME Council 5 employees, and/or other South Metro employees who were openly supporting AFSCME representation have discriminatorily solicited employees to vote whom they knew were ineligible because they were no longer employed by the Employer but whom they believed would cast "YES" ballots. Persons who were believed to be "No" votes were not similarly solicited or informed of how to cast a ballot when one's name was not on the voting list. These solicited voters included, specifically:

4³. Intimidation and Coercion of Employees in the Exercise of Their Section 7 Rights. Since at least on or about March 4, 2011, when AFSCME filed its first petition for representation at South Metro, members of the "South Metro Organizing Committee," AFSCME Council 5 employees, and/or other South Metro employees who were openly supporting AFSCME representation have conducted themselves towards other South Metro employees in such a way as to spoil the conditions necessary for a free and fair election and have interfered with the exercise of employees' Section 7 rights by creating a hostile, intimidating, and coercive environment for South Metro employees with respect to the question of representation. This conduct has poisoned the laboratory conditions intended by the Board for a free and fair election on the representation question in this case. Many SMHS employees have been afraid to express their views about the union question unless they fully support electing AFSCME. Many have similarly been afraid to cast a vote against the union, even if that is what they truly wish to do. More specifically, Employer alleges each of the following as separate specific objections, all of which share the same general characterization set forth in this paragraph.

[NOTE: Below, "union organizer" refers to a South Metro employee. "AFSCME employee" is used to refer someone employed by AFSCME Council 5.]

- In one or more instances union organizers illicitly gained entry into the locked apartment complex(es) of a South Metro employee, to which the organizers had not been granted access by the employee(s) who lived there, and then surprised the employees and solicited them for a Union YES vote (**Witnesses** who have information on this and who can name additional employee witnesses:
- In one or more instances like the one above involving uninvited access to employees' homes the union organizers did not leave when asked (**Witnesses** who have information on this and who can name additional employee witnesses:

- Female staff member went to a meeting at Park Square Court, was followed to car by a male union organizer that the employee didn't know. The organizer was verbally aggressive, told her he had "worked too hard" for AFC union organizing efforts for there to be "so little interest" in the union (**Witnesses** who have information on this and who can name additional employee witnesses:
- Employees received phone calls at work which included offers to be treated to dinner; many of these dinners when accepted were "two on one"-- one union organizer from South Metro plus AFSCME employee trying to persuade South Metro employee, and thus many employees experienced this as intimidating and coercive. (**Witnesses** who have information on this and who can name additional employee witnesses:
- Dinners were "two on one"-- one union organizer from South Metro plus AFSCME employee trying to persuade South Metro employee (**Witnesses** who have information on this and who can name additional employee witnesses:
- (**Witnesses** who have information on the following:
 - was confronted in person at ACT office, and brought to tears
 - was yelled at by union organizer(s), yelling at her, "who are you talking to?"
 - was asked by union organizer, "which way are you voting?"
 - was told by union organizer, "you need to give us an answer"
 - was told by union organizer, "we're going to keep calling"
 - was told by union organizer, "you need to vote yes."
 - was called and told by union organizer, "me and the AFSCME rep are on the way over," and in that call the union organizer yelled at her saying that 'we need to know how you're voting, you need to vote yes'. When asked/told them not to come, they told her they were going to keep calling and called again and again to say they wanted to meet and talk to her
- Employee was intimidated and coerced by AFSCME employee telling her that "your ballot will not be a secret." is in the two person unit of 18-RC-17753.
- After expressed at an employer's meeting of employees that the union had lied to her, she was inundated by union organizer and AFSCME phone calls and solicitations and invitations to come to a bar

after work and discuss the union. was intimidated and felt coerced by this conduct. agreed to go to happy hour to meet friends, when she got there only , “Are you ?” (**Witnesses** who have information on this and who may be able to name additional witnesses:

- Union called one employee, , on Wednesday the day before the election to ask what time she would be going in to vote. (**Witnesses** who have information on this and who may be able to name additional witnesses:
- Union organizers went to new employee’s home to tell her what SMHS was “really like,” promised increased salary, job security (**Witnesses** who have information on this and who may be able to name additional witnesses:
- Employees (one of whom may be) were afraid to answer truthfully that they didn’t support the union because union organizers were treating them very aggressively and they were being intimidated by that treatment (**Witnesses** who have information on this and who may be able to name additional witnesses:
- Union actively solicited on-call staff (**Witnesses** who have information on this and who may be able to name additional witnesses:
 - – pursued, told by SMHS not eligible to vote
 - was pursued by letter, by phone, visits to home; she called AFSCME office and asked for contact to stop – was brushed off and calls continued
- Employee has said organizers were rude, hostile, called repeatedly (**Witnesses** who have information on this and who may be able to name additional witnesses:
 - When employee’s dad answered the phone tried to convince dad to “convince daughter” to vote for the union
- Union organizers showed up at employee’s parents house, waited for employee while she was in the shower (**Witnesses** who have information on this and who may be able to name additional witnesses:
- New employee, targeted – asked several times for union/organizers to stop calling but they did not (**Witnesses** who have information on this and who may be able to name additional witnesses:
- Day before election, conversation among staff as follows (**Witnesses** who have information on this and who may be able to name additional witnesses:
 - PETITION: “we’re going to vote union”, 70 signatures; One staff member asked another, “Do you know you’re on this petition?”

- The staff member responded, “What petition? I never signed a petition.”
- Union had cut and pasted signatures from sign in sheet from first meeting
- Union organizers and/or AFSCME used “petition” document to make employees feel they had to vote for the union, even if they changed mind, have to “honor” their first decision
- Union organizers and/or AFSCME asked employee, “how can you go against what you said you were going to do?”
- Staff members who had expressed interest in and/or support for union felt they had to lie about voting against union, concerned would be yelled at, considered a traitor (**Witnesses** who have information on this and who may be able to name additional witnesses:
- One employee has indicated that she has avoided going to the Community Foundations program facility (right across the street from a number of her job duties) in order to avoid having to be confronted by union organizers (**Witnesses** who have information on this and who may be able to name additional witnesses:
- Same employee signed a union card just to get union organizers at Community Foundations program to stop calling her and trying to get her to sign a card (**Witnesses** who have information on this and who may be able to name additional witnesses:
- Staff member who considered changing vote after Tom and Terry meeting was “bitched out” by union supporter (**Witnesses** who have information on this and who may be able to name additional witnesses:
- After election, employee who was asked by union organizer, “You voted yes, right?” felt she had to lie and was emotionally torn up by that lying (**Witnesses** who have information on this and who may be able to name additional witnesses:
- Union organizers, in context of trying to figure out “what went wrong” with election, where they thought they had 75 YES votes – questioned employee, “where do you stand?” in a manner that the employee found intimidating and that is consistent with the overall intimidating and coercive environment created by the Union (**Witnesses** who have information on this and who may be able to name additional witnesses:
- Union organizers solicited, coached on-call supporters to vote (**Witnesses** who have information on this and who may be able to name additional witnesses:
- New employee at Community Foundations was aggressively pursued by union organizers (**Witnesses** who have information on this and who may be able to name additional witnesses:

- new employee was told, “so and so just started and they joined the union right away,” suggesting that she should have already expressed her support
- Employees feared being pressured and coercively solicited and interrogated by union organizers (**Witnesses** who have information on this and who may be able to name additional witnesses:
- One employee who asked questions at an employer persuader meeting had their phone ring off the hook all night (**Witnesses** who have information on this and who may be able to name additional witnesses:
- Another employee was in tears, distraught; expressed that she was terrified of backlash if she changed her vote from YES to NO (**Witnesses** who have information on this and who may be able to name additional witnesses:
- One employee called in tears/hysterics day before the election, felt didn’t have a choice (**Witnesses** who have information on this and who may be able to name additional witnesses:
 - once you expressed interest in the union, had to stay “in the club”
- Employees felt hurt/intimidated because of ill treatment by their friends (**Witnesses** who have information on this and who may be able to name additional witnesses:
 - SMHS union organizers “made it ugly”
- One employee needed to take time off because of stresses, one of which was “union stuff” (**Witnesses** who have information on this and who may be able to name additional witnesses:
- Employees reported feeling “harassed,” yelled at over phone (**Witnesses** who have information on this and who may be able to name additional witnesses:
- Employee indicated they felt their pre-existing friendship with union organizer had been “corrupted” because staff didn’t express support for the union (**Witnesses** who have information on this and who may be able to name additional witnesses:
- Employee was approached in her home by union organizer and union organizer’s spouse (**Witnesses** who have information on this and who may be able to name additional witnesses:
 - Employee said didn’t want to discuss, union organizer and spouse came in anyway while employee was cooking dinner, union organizer spouse “distracted” employee’s spouse while union organizer cornered her – stayed 30 minutes though not invited in
- Employee was “cornered” in break room by union organizer, felt harassed/pressured, felt couldn’t talk about anything, couldn’t openly express opinion on union organizing (**Witnesses** who have information on this and who may be able to name additional witnesses:

- Union supporter who left South Metro a month ago was contacted by the union to come and vote (**Witnesses** who have information on this and who may be able to name additional witnesses:
- Employee got 6 calls per day from union organizers she worked closely with, who wouldn't stop calling even though discouraged by employee (**Witnesses** who have information on this and who may be able to name additional witnesses:

54.

Deception, Lies and Fraudulent Conduct. Members of the "South Metro Organizing Committee," AFSCME Council 5 employees, and other South Metro employees who were openly supporting AFSCME representation have engaged in a pattern of deceptive and fraudulent practices that have interfered with the exercise of free choice rights relating to representation questions under section 7 of the NLRA, in a manner that has poisoned the laboratory conditions for a free and fair election on the representation question in this case. Instances of such deception include the following:

- UNION PHOTO: (**Witnesses** who have information on this and who may be able to name additional witnesses:
 - employee who went to informational meeting was leaving early, was asked to stay until they got together for a photo because lots of people showed up
 - put her front and center
 - thought they were just "taking a picture"
 - picture became a flyer
 - employee felt misled, taken advantage of
- Union organizer told employee that manager had been paid off to pretend to care about employee(s), team-building events were "staged"
- was told by that units will be shifted around by AFSCME once they come in (**Witnesses** who have information on this:
- Employees were falsely told by union organizer that a program director (supervisory/managerial employee) got a \$12,000 raise and he was for the union
- Union organizers invited supervisors (leads) to participate in showing support for union
- AFSCME sent letter to employees deceptively and falsely claiming credit for wage increases, which AFSCME had nothing to do with and which were decided on before filing of the petition and were in fact the subject of ULP charges filed by AFSCME

Melissa Bentivolio
National Labor Relations Board
May 5, 2011
Page 15

The Employer stands ready to cooperate fully with the Board in the resolution of these challenges and objections.

Very truly yours,

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

By /s/ Mark S. Mathison
Mark S. Mathison

c: Meghann F. Kantke

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NLRB
ORDER SECTION

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SOUTH METRO HUMAN SERVICES

Employer

and

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 5, AFL-CIO

Petitioner

Case No. 18-RC-17754

Date Filed
3/17/2011

Date Issued THURSDAY, APRIL 28, 2011

Type of Election
(Check One:)

☒ Stipulation

☐ Board Direction

☐ Consent Agreement

☐ RD Direction

Incumbent Union (Code)

(If applicable check
either or both:)

☐ 8 (b)(7)

☐ Mail Ballot

CORRECTED TALLY

TALLY OF BALLOTS

CORRECTED TALLY

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters	171
2. Number of Void ballots	0
3. Number of Votes cast for PETITIONER	70
4. Number of Votes cast for	
5. Number of Votes cast for	
6. Number of Votes cast against participating labor organization(s)	71
7. Number of Valid votes counted (sum of 3, 4, 5, and 6)	141
8. Number of Challenged ballots	9
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8)	150
10. Challenges are (not) sufficient in number to affect the results of the election.	
11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for	
PETITIONER	

For the Regional Director /s/ Melissa Bentivolio
Region Eighteen

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this Tally.

For SOUTH METRO HUMAN SERVICES

For AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, COUNCIL 5, AFL-CIO

For

For

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

The parties agree that a hearing is waived, that approval of this Agreement constitutes withdrawal of any notice of hearing previously issued in this matter, that the petition is amended to conform to this Agreement, and further **AGREE AS FOLLOWS:**

1. SECRET BALLOT. A secret-ballot election shall be held under the supervision of the Regional Director in the unit defined below at the agreed time and place, under the Board's Rules and Regulations.

2. ELIGIBLE VOTERS. The eligible voters shall be unit employees employed during the payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced. The employer shall provide to the Regional Director, within seven (7) days after the Regional Director has approved this Agreement, an election eligibility list containing the *full* names and addresses of all eligible voters. **Excelsior Underwear, Inc., 156 NLRB 1236, as clarified by North Macon Health Care Facility, 315 NLRB 359 (1994).**

3. NOTICE OF ELECTION. Copies of the Notice of Election shall be posted by the Employer in conspicuous places and usual posting places easily accessible to the voters at least three (3) full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

4. ACCOMMODATIONS REQUIRED. All parties should notify the Regional Director as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who, in order to participate in the election, need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, and request the necessary assistance.

5. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

6. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

7. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

8. RECORD. The record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

9. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c). *(Insert commerce facts.)*

The Employer, South Metro Human Services, is a non-profit Minnesota corporation with a principal office located in St. Paul, Minnesota and more than a dozen other service sites located throughout the Twin Cities metropolitan area, where it is engaged in the business of providing service to adults with mental illness and/or chemical dependence. During the last 12 months, a representative period, the Employer derived gross revenues in excess of \$500,000 from the sale of its services. During the same period, the Employer purchased and received services and goods in excess of \$50,000 from vendors located in the State of Minnesota, and those vendors received those same services and goods directly from points located outside the State of Minnesota.

10. WORDING ON THE BALLOT. The choice shall be "Yes" or "No".

11. PAYROLL PERIOD FOR ELIGIBILITY -PERIOD ENDING March 15, 2011

12. DATE, HOURS, AND PLACE OF ELECTION.

DATE: April 28, 2011

HOURS: 9:00 a.m. to 7:00 p.m.

PLACE: In the main conference room at the Employer's principal office located at 400 Sibley Street, Suite 500, St. Paul, Minnesota

13. THE APPROPRIATE COLLECTIVE-BARGAINING UNIT.

All full-time and regular part-time Professional Employees employed by South Metro Human Services; excluding all Service and Maintenance employees, M.D.'s, psychiatrists, licensed psychologists, technical employees, business office clericals, skilled maintenance employees and excluding all managers, supervisors, confidential employees and guards as defined by the Act.

South Metro Human Services
(Employer)

AFSCME Council 5
(Labor Organization)

By /s/Mark Mathison 3/30/11
(Name) (Date)
Mark Mathison, Attorney

By /s/Ryan Hanson on behalf of Jeff Sabin
(Name) (Date)
Jeff Sabin, Organizer

Recommended:

/s/Melissa Bentivolio 3/31/11
(Board Agent) (Date)

Date approved 3/31/11

/s/Marlin O. Osthus (JAH)
Regional Director, National Labor Relations Board

Case 18-RC-17754

SOUTH METRO HUMAN SERVICES
St. Paul, Minnesota

18-RC-17754

VOTING UNIT

INCLUDED: All full-time and regular part-time Professional Employees employed by South Metro Human Services, who were employed during the payroll period ending March 15, 2011.

EXCLUDED: All Service and Maintenance employees, M.D.'s, psychiatrists, licensed psychologists, technical employees, business office clericals, skilled maintenance employees and excluding all managers, supervisors, confidential employees and guards as defined by the Act.

DATE, HOURS, AND PLACE OF ELECTION

THURSDAY, APRIL 28, 2011

9:00 a.m. to 7:00 p.m.

IN THE MAIN CONFERENCE ROOM AT THE EMPLOYER'S PRINCIPAL OFFICE
LOCATED AT 400 SIBLEY STREET, SUITE 500, ST. PAUL, MINNESOTA



UNITED STATES OF AMERICA
National Labor Relations Board



OFFICIAL SECRET BALLOT

For certain employees of
SOUTH METRO HUMAN SERVICES
St. Paul, Minnesota

Do you wish to be represented for purposes of collective bargaining by -
AFSCME COUNCIL 5?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES

☐

NO

☐



UNITED STATES OF AMERICA
National Labor Relations Board



OFFICIAL SECRET BALLOT

For certain employees of
SOUTH METRO HUMAN SERVICES
St. Paul, Minnesota

Do you wish to be represented for purposes of collective bargaining by -

AFSCME COUNCIL 5?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES

☐

NO

☐

DO NOT SIGN THIS BALLOT. Fold and drop in ballot box.
If you spoil this ballot return it to the Board Agent for a new one.

The National Labor Relations Board does not endorse any choice in this election.
Any markings that you may see on any sample ballot have not been put there by the
National Labor Relations Board.



UNITED STATES OF AMERICA
National Labor Relations Board



OFFICIAL SECRET BALLOT

For certain employees of
SOUTH METRO HUMAN SERVICES
St. Paul, Minnesota

Do you wish to be represented for purposes of collective bargaining by -

AFSCME COUNCIL 5?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

FORM EXEMPT UNDER 44 U.S.C.

DO NOT WRITE IN THIS SPACE

Case No. 18-RC-17754 Date Filed March 17, 2011

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (if box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
- ☒ **RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees
- ☐ **RM-REPRESENTATION (EMPLOYER PETITION)** - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ **RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE)** - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ **UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES)** - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ **UC-UNIT CLARIFICATION** - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) ☐ In unit not previously certified ☐ In unit previously certified in Case No. _____
- ☐ **AC-AMENDMENT OF CERTIFICATION** - Petitioner seeks amendment of certification issued in Case No. _____ Attach statement describing the specific amendment sought.

2. Name of Employer South Metro Human Services		Employer Representative to contact Mark Mathison	Tel. No. 612-632-3247
3. Address(es) of Establishment(s) Involved (Street and number, city, State, ZIP code) 400 Sibley St. Suite 500, Saint Paul MN, 55101		Fax No. 612-632-4247	
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Mental Health Services	4b. Identify principal product or service Health Care	Cell No.	e-Mail Mark.Mathison@gpmlaw.com
5. Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.) Included All full-time and regular part-time Professional Employees employed by South Metro Human Services Excluded All Service and Maintenance, M.D.'s, psychiatrists, psychologists, all managers, supervisors, confidential employees, and guards as defined by the Act.		6a. Number of Employees in Unit: Present 133 Proposed (By UC/AC)	
(If you have checked box RC in 1 above, check and complete EITHER Item 7a or 7b, whichever is applicable)		6b. Is this petition supported by 30% or more of the employees in the unit? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No *Not applicable in RM, UC, and AC	

7a. <input type="checkbox"/> Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state).	
7b. <input type="checkbox"/> Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.	
8. Name of Recognized or Certified Bargaining Agent (If none, so state.) N/A	
Affiliation	
Address N/A	Tel. No. Date of Recognition or Certification
	Cell No. Fax No. e-Mail

9. Expiration Date of Current Contract. If any (Month, Day, Year)	10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)
11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	11b. If so, approximately how many employees are participating?
11c. The Employer has been picketed by or on behalf of (Insert Name) N/A , a labor organization, of (Insert Address) _____ Since (Month, Day, Year) _____	

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)

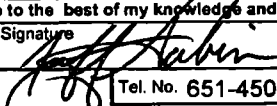
Name	Address	Tel. No.	Fax No.
		Cell No.	e-Mail

13. Full name of party filing petition (If labor organization, give full name, including local name and number)
American Federation of State County and Municipal Employees, Council 5 AFL-CIO

14a. Address (street and number, city, state, and ZIP code) 300 Hardman Ave S. South Saint Paul, MN 55075	14b. Tel. No. EXT 651-450-4990	14c. Fax No. 651-455-1311
	14d. Cell No.	14e. e-Mail

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization)
American Federation of State County and Municipal Employees, AFL-CIO

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) Jeff Sabin	Signature 	Title (if any) Lead Organizer
Address (street and number, city, state, and ZIP code) 300 Hardman Ave S. South Saint Paul, MN 55075	Tel. No. 651-450-4990	Fax No. 651-455-1311
	Cell No. 218-341-9411	eMail Jeff.Sabin@AFSCMEMN.org

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.